RECORD AND BRIEFS

Supreme Court, U.S.
FILED
OCT 30 2017
OFFICE OF THE CLERK

No. 16-111

In the Supreme Court of the United States

MASTERPIECE CAKESHOP, LTD.; AND JACK C. PHILLIPS,
Petitioners,

v.

COLORADO CIVIL RIGHTS COMMISSION,
CHARLIE CRAIG, AND DAVID MULLINS,
Respondents.

On Writ of Certiorari to the Colorado Court of Appeals

BRIEF OF AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE; ANTI-DEFAMATION LEAGUE; BEND THE ARC: A JEWISH PARTNERSHIP FOR JUSTICE; FAIRNESS WEST VIRGINIA; INTERFAITH ALLIANCE FOUNDATION; NATIONAL COUNCIL OF JEWISH WOMEN, INC.; AND PEOPLE FOR THE AMERICAN WAY FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTERESTS OF THE *AMICI CURIAE*[1]

Amici are religious and civil-rights organizations that represent diverse beliefs, experiences, and faith traditions but share a commitment to religious freedom and to ensuring that LGBTQ people, and all Americans, remain free from officially sanctioned discrimination.

The constitutional protections for religious freedom and equal protection work hand in hand to safeguard equal treatment, equal dignity, and equal respect for all persons. *Amici* have a strong interest in ensuring that our Nation's fundamental commitment to these values is never eroded or tainted by misusing the language of religious freedom to afford official imprimatur to maltreatment of people based on their religion, race, sex, sexual orientation, or other protected classifications.

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[1] *Amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, or their counsel made a monetary contribution to fund the brief's preparation or submission. The parties' letters consenting to the filing of this brief have been filed with the Clerk's office.

The *amici* are:

- Americans United for Separation of Church and State.
- Anti-Defamation League.
- Bend the Arc: A Jewish Partnership for Justice.
- Fairness West Virginia.
- Interfaith Alliance Foundation.
- National Council of Jewish Women, Inc.
- People For the American Way Foundation.

More detailed descriptions of the *amici* appear in the Appendix.

INTRODUCTION AND SUMMARY OF ARGUMENT

Religious freedom is a constitutionally protected value of the highest order. The Free Exercise and Establishment Clauses work in tandem to secure the rights to believe, or not, and to worship, or not, according to the dictates of conscience. The guarantee of free exercise of religion is not, and never has been, a license to discriminate. "The First Amendment * * * gives no one the right to insist that in pursuit of [one's] own interests others must conform their conduct to [one's] own religious necessities." *Estate of Thornton* v. *Caldor*, 472 U.S. 703, 710 (1985).

Yet petitioners ask this Court to grant them just such an impermissible license to discriminate. They claim entitlement to a constitutionally mandated exemption from a neutral, generally applicable law intended to protect minority and marginalized groups, so that they may legally refuse service to and exclude

customers who do not conform to their religious views. The Free Exercise Clause grants no such right. And no assertion of any 'hybrid' claim changes that rule.

The Establishment Clause compels the same conclusion: It bars the granting of religious exemptions when the effect would be to impose undue costs, burdens, or harms on innocent third parties. Yet petitioners' requested exemption from the Colorado Anti-Discrimination Act would do just that: It would confer on petitioners, and all commercial establishments, official permission to deny statutorily mandated equal service to anyone who does not live according to a business's or its owner's religious views. Such an exemption cannot be required by the Free Exercise Clause because granting it would violate the Establishment Clause.

Petitioners' assertion of a free-exercise right to violate antidiscrimination laws also reflects a basic misunderstanding of the fundamental protections for religious freedom embodied in the First Amendment. Antidiscrimination laws protect religious freedom; they do not interfere with, impede, or frustrate the enjoyment of it.

Federal, state, and local public-accommodations laws like Colorado's extend essential protections against discrimination to religious groups just as to other protected classes. They thus advance the aims of the Religion Clauses by ensuring that our Nation's vibrant diversity of religion and belief does not divide and roil society. The laws ensure that a Muslim cannot be refused a meal by a Protestant restauranteur, a Catholic cannot be evicted by a Jewish landlord, and a Sikh cannot be fired by a Baptist supervisor for adhering to the 'wrong' faith.

If petitioners' argument for a religious exemption from public-accommodations law were accepted, all those discriminatory acts might receive constitutional protection—not to mention imprimatur from, and hence encouragement by, this Court. The predictable consequence would be that persons of minority faiths, LGBTQ people, and other historically marginalized groups would have to choose between hiding their identity to conform to others' religiously based expectations, on the one hand, and getting turned away from businesses open to the public, on the other. If religious freedom and equal justice under law mean anything, they surely mean that no one should be put to that choice.

ARGUMENT

I. THE RELIGION CLAUSES NEITHER AUTHORIZE NOR ALLOW THE EXEMPTION THAT PETITIONERS SEEK.

A. The Free Exercise Clause does not authorize petitioners' requested religious exemption from public-accommodations law.

Even if petitioners' denial of service to same-sex couples may be considered an exercise of religion for First Amendment purposes—a question that this Court need not decide—the Free Exercise Clause does not confer a right to petitioners' requested exemption from the Colorado Anti-Discrimination Act's regulation of that conduct.

1. This Court's free-exercise jurisprudence does not confer a right to violate antidiscrimination laws.

a. When a law is religiously neutral on its face, is generally applicable without regard to religion, and does not constitute a religious gerrymander (*i.e.*, it is not deceptively drafted either so that "almost the only conduct subject to" it is religious exercise or so that it "proscribe[s] more religious conduct than is necessary to achieve [its] stated ends"), this Court has held that the law is subject to rational-basis review. *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 533–535, 538 (1993); see also *Emp't Div. Dep't Human Res.* v. *Smith*, 494 U.S. 872, 878 (1990). It is thus presumptively valid and must be upheld as long as it serves a legitimate governmental interest and is rationally related to serving that interest. See generally, *e.g.*, *Armour* v. *City of Indianapolis*, 566 U.S. 673, 680 (2012).

Like all public-accommodations laws of which *amici* are aware, the Colorado Anti-Discrimination Act easily satisfies these requirements. It does not target religious exercise either on its face or by subterfuge—there is not a hint of either[2]—and it applies

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[2] Petitioners contend to the contrary (at Br. 39–46) that in applying the Act the Colorado Civil Rights Commission has allowed other bakeries to "discriminate" on the basis of religion by allowing them to refuse to sell cakes bearing messages condemning marriages of same-sex couples while requiring petitioners to sell cakes that support the marriages. But the Commission determined that the other bakeries' refusals were general ones—*i.e.*, limitations on the goods that would be sold to any customer, without regard to religious affiliation, sexual orientation, or any other protected characteristic. See J.A. 240, 249, 257. Petitioners, by contrast, refuse to sell to same-sex couples even a cake

to all similarly situated businesses without regard to religion.[3] See COLO. REV. STAT. § 24-34-601. And the Act easily satisfies rational-basis review: The aim to prevent denials of service to historically marginalized groups—both generally and with respect to sexual orientation—is not merely a legitimate governmental interest; it is a critical "protection[ ] against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society." *Romer* v. *Evans*, 517 U.S. 620, 631 (1996); accord, *e.g.*, *Obergefell* v. *Hodges*, 135 S. Ct. 2584, 2600 (2015). And it cannot be gainsaid that barring discriminatory refusals of service in places of public accommodation is rationally related to the goal of ending discrimination. Indeed, it is essential to accomplishing that goal.

b. Under this Court's pre-*Smith* free-exercise jurisprudence, petitioners' claim here also fails as a matter of law. For the Free Exercise Clause has never been held to afford religious exemptions that would shift undue costs and burdens of the claimant's religious exercise onto innocent third parties.

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identical to ones that they have already sold and would again sell to different-sex couples. It is that action—the refusal to sell the same item on the same terms to members of a statutorily protected class—that the Commission and the court below (at Pet. App. 16a–17a, 57a) determined was a violation of the Colorado Anti-Discrimination Act.

[3] The statutory exemption for houses of worship (see COLO. REV. STAT. § 24-34-601(1)) merely recognizes that those entities are not public accommodations—*i.e.*, they are not similarly situated businesses. It does not disfavor them either as a class or based on denomination, so it does not intrude on any free-exercise interest.

In *United States* v. *Lee*, 455 U.S. 252 (1982), for example, this Court held that "[w]hen followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity." *Id.* at 261. Accordingly, the Court rejected an employer's request for an exemption from paying social-security taxes because the exemption would have "operate[d] to impose the employer's religious faith on the employees." *Ibid.*; see also *Prince* v. *Massachusetts*, 321 U.S. 158, 166 (1944) (state's authority to enforce child-labor law was "not nullified merely because" seller of religious magazines "ground[ed] his claim [for an exemption] * * * on religion").

c. This rule against unduly harming nonbeneficiaries of a requested religious exemption is especially important, moreover, when antidiscrimination laws are at issue. Because these laws are themselves designed to prevent injuries to innocent third parties, their whole purpose would be upended by exemptions that license and authorize the injuries to occur.

Thus, in *Bob Jones University* v. *United States*, 461 U.S. 574 (1983), this Court upheld the denial of tax-exempt status to universities with racially discriminatory admissions policies (*id.* at 603–604), notwithstanding that the policies were premised on sincere religious beliefs (see *id.* at 602 n.28). The Court held that the government's interest in preventing the harm caused by race discrimination in education "substantially outweighs whatever burden denial of tax benefits places on petitioners' exercise of their religious beliefs." *Id.* at 604. And in *Newman* v. *Piggie*

Park Enterprises, Inc., 390 U.S. 400 (1968) (per curiam), the Court rejected as "patently frivolous" (*id.* at 402 n.5) the claim of a business owner whose religious beliefs "compel[led] him to oppose any integration of the races" (*Newman* v. *Piggie Park Enters., Inc.*, 256 F. Supp. 941, 944 (D.S.C. 1966), aff'd, 390 U.S. 400 (1968) (per curiam)) that the Free Exercise Clause conferred on him a right to violate Title II of the Civil Rights Act, 42 U.S.C. § 2000a *et seq.* (the principal federal public-accommodations law).[4]

Antidiscrimination laws have, in fact, given way to religious exemptions only when the autonomy of religious institutions or the selection of clergy was at issue. See *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *E.E.O.C.*, 565 U.S. 171, 188–192 (2012) (ministerial exception exempted from Americans with Disabilities Act a church's employment of called teachers); *Corp. of the Presiding Bishop* v. *Amos*, 483 U.S. 327, 336 (1987) (upholding Title VII's exemption for religious organizations, which Congress enacted to "minimize governmental 'interference with the decision-making process in religions'" (quoting district court) (brackets omitted)). For ordinary businesses like the bakery here, constitutional concerns for the integrity of religious denominations and houses of worship have no bearing. The principle that constitutionally authorized exemptions must not de-

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[4] See also, *e.g.*, *Dole* v. *Shenandoah Baptist Church*, 899 F.2d 1389, 1397–1399 (4th Cir. 1990) (Fair Labor Standards Act's requirement of equal pay for women did not violate employer's free-exercise rights); *E.E.O.C. v. Fremont Christian Sch.*, 781 F.2d 1362, 1367–1369 (9th Cir. 1986) (employer's religious beliefs about proper gender roles did not support free-exercise exemption from Equal Pay Act and Title VII).

trimentally affect nonbeneficiaries is therefore controlling.

d. A bedrock principle of the First Amendment is that the guarantee of free exercise of religion is a shield to protect religious exercise, not a sword to impose one's own beliefs—or the costs and burdens of those beliefs—on nonadherents. That principle is what allows us to live together in relative harmony in a religiously pluralistic society, rather than either segregating into closed religious communities with only those who share and are willing to live under precisely the same code of beliefs and practices, or devolving into religiously based social strife that would imperil the religious freedom of all. Hence, though petitioners' religious views here are undoubtedly sincere, recognition of an entitlement to a constitutional exemption from general laws—and most particularly from laws that protect historically marginalized groups against exclusion from ordinary, day-to-day consumer transactions—would undermine the rule of law and "court anarchy" (*Smith*, 494 U.S. at 888). The Free Exercise Clause has never required that result. Nor should it here.

2. Petitioners' assertion of a hybrid claim does not change the analysis or result.

Petitioners' assertion (at Br. 46–48) of a so-called hybrid right does not transform an insubstantial free-exercise claim into something more. Although petitioners argue that the claim should receive strict scrutiny, this Court has never adopted that approach; the lower-court decisions to which petitioners point have declined to apply it; and legal scholars have roundly rejected it. And even if it *were* a valid legal doctrine, it would not change the outcome here.

In *Smith*, this Court explained that it had previously recognized religious accommodations with respect to neutral, generally applicable laws in only a few instances, which the Court described as "hybrid situation[s]" involving violations of the Free Speech Clause or the fundamental parental right to direct the upbringing of one's children. See 494 U.S. at 881–882. The Court did not, either then or at any time since, actually employ a hybrid-rights approach to ratchet up the level of scrutiny on a free-exercise challenge to a general law. Cf. *id.* at 882 ("Respondents urge us to hold, quite simply, that when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions but the conduct itself must be free from governmental regulation. We have never held that, and decline to do so now.").

Petitioners rely on *Wooley* v. *Maynard*, 430 U.S. 705 (1977), and *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624 (1943), to try to demonstrate a doctrinal commitment by this Court to a hybrid-rights approach. But in neither case did the decision of the Court even mention the Free Exercise Clause. Both cases were instead decided solely under the Free Speech Clause. See *Wooley*, 430 U.S. at 713 (State may not "constitutionally require an individual to participate in the dissemination of an ideological message by displaying it on his private property in a manner and for the express purpose that it be observed and read by the public"); *Barnette*, 319 U.S. at 634 ("To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individual's right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind").

And in *Watchtower Bible & Tract Society of New York, Inc.* v. *Village of Stratton*, 536 U.S. 150 (2002), to which petitioners also vaguely point, this Court noted without comment that the Sixth Circuit had "rejected petitioners' reliance on the discussion of laws affecting both the free exercise of religion and free speech in [*Smith*] because that 'language was dicta and therefore not binding.'" *Id.* at 159. If the Sixth Circuit's refusal to entertain a hybrid-rights claim had flouted *Smith*, this Court surely would have said so—and presumably would itself have evaluated that claim on review. The Court did neither.

More generally, most of the "hybrid situations" that the Court identified in *Smith* involved no assertion of a free-exercise claim at all. And while most also predated the formal recognition of tripartite levels of constitutional scrutiny, so the terminology that they used varied, in all instances the violations of *other* constitutional provisions alone would, in modern parlance, have triggered heightened scrutiny.[5] Free-exercise claims, when there were any, did nothing either to dictate or to explain the Court's mode of analysis.

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[5] See *Wisconsin* v. *Yoder*, 406 U.S. 205, 232 (1972) ("This case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children."); *Murdock* v. *Pennsylvania*, 319 U.S. 105, 109 (1943) (distribution of religious tracts "has the same claim as [other forms of evangelism] to the guarantees of freedom of speech and freedom of the press"); *Cantwell* v. *Connecticut*, 310 U.S. 296, 306 (1940) ("[T]he availability of a judicial remedy for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible."); *Pierce* v. *Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–535 (1925) ("[W]e think it entirely plain that the Act * * * unreasonably interferes

Nor do any of the lower-court opinions that petitioners cite actually recognize and grant relief on a hybrid-rights claim. See *Cornerstone Christian Sch.* v. *Univ. Interscholastic League*, 563 F.3d 127, 136 n.8 (5th Cir. 2009) (declining to decide "whether any potential overlap of the asserted rights requires a heightened level of scrutiny"); *Axson-Flynn* v. *Johnson*, 356 F.3d 1277, 1301 (10th Cir. 2004) (recognizing qualified immunity from "controversial 'hybrid-rights' exception" without adopting theory itself, because law is not clearly established, and remanding for determination whether challenged conduct was not neutral and generally applicable and therefore triggered strict scrutiny purely under Free Exercise Clause); *Miller* v. *Reed*, 176 F.3d 1202, 1208 (9th Cir. 1999) ("We hold that a plaintiff does not allege a hybrid-rights claim entitled to strict scrutiny analysis merely by combining a free exercise claim with an utterly meritless claim."); see also, *e.g.*, *Roman Catholic Bishop of Springfield* v. *City of Springfield*, 724 F.3d 78, 101 & n.18 (1st Cir. 2013) (concluding that strict scrutiny applied to free-exercise claim alone, and therefore not determining whether hybrid-rights approach is valid).

Not only is a hybrid-rights theory unnecessary to explain the cases, but its logic is also questionable: "How can claimants be entitled to greater relief under

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with the liberty of parents and guardians to direct the upbringing and education of children under their control.").

As for *Follett* v. *Town of McCormick*, 321 U.S. 573 (1944), the decision did not even hint at heightened scrutiny. Rather, the Court quoted *Murdock* for the proposition that "'[f]reedom of press, freedom of speech, freedom of religion are in a preferred position'"—*i.e.*, they are constitutionally protected—so the selling of religious literature, like the selling of newspapers, cannot be suppressed by use of the tax laws. *Id.* at 574–578.

a 'hybrid' claim than they could attain under either of the components of the hybrid?" Michael W. McConnell, *Free Exercise Revisionism and the* Smith *Decision*, 57 U. CHI. L. REV. 1109, 1121 (1990).

A weak, insubstantial, or legally invalid free-exercise claim, or one that otherwise warrants rational-basis review and a strong presumption of constitutionality, does not become something more merely because it is repackaged and re-presented also under a second constitutional clause. And free-exercise claims can almost always be redescribed as implicating, in the claimant's eyes, free speech or some other interest. See, *e.g.*, *id.* at 1122 (explaining that *Smith* itself was as much a hybrid of speech and religious exercise as any of the cases that the Court described as "hybrid situations"). If the invocation of multiple rights were alone enough to trigger strict scrutiny, the choice of level of review would devolve into a pleading formality. When, as here, the Free Exercise Clause dictates rational-basis review, any parallel claim under another clause either triggers strict scrutiny, or it does not. If it does not, the mere fact that more than one legal claim has been alleged should not call for a level of scrutiny that neither claim alone is sufficient to trigger. The hybrid-rights approach would therefore appear to be doctrinally empty.

But even if the approach had doctrinal validity, it still would be of no help to petitioners here, for two independent reasons.

First, even if multiple weak claims that are subject to rational-basis review could somehow add up to strict scrutiny, a legally insupportable claim surely cannot contribute to that equation. Cf. *Miller*, 176 F.3d at 1208. The argument that religious views confer a constitutional basis for infringing the rights of

others does not comport with the Free Exercise, Due Process, or Equal Protection Clauses. See, *e.g.*, *Lawrence* v. *Texas*, 539 U.S. 558, 571 (2003) (due process); *id.* at 582 (O'Connor, J., concurring in the judgment) (equal protection); *Smith*, 494 U.S. at 878–882 (free exercise). So even if petitioners' free-speech argument had any merit—which, for the reasons explained by respondents, it does not—the meritless free-exercise claim would lend not a feather's weight to it.

And second, even if strict scrutiny of the free-exercise claim *were* somehow triggered here, whether on a hybrid-rights approach or otherwise, the Establishment Clause would forbid the requested exemption, for the reasons explained in the next section.

B. The Establishment Clause forbids petitioners' requested religious exemption because the exemption would unduly harm third parties.

Even if petitioners' free-exercise claim could be reconciled with this Court's long-standing free-exercise jurisprudence and were also somehow entitled to strict scrutiny, that claim still would not prevail here because the Establishment Clause forbids exemptions that harm third parties.

1. "The principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the Establishment Clause." *Lee* v. *Weisman*, 505 U.S. 577, 587 (1992). Religious exemptions that would detrimentally affect nonbeneficiaries would impermissibly prefer the favored religious beliefs over the rights and differing beliefs of the individuals or groups being burdened. See *Caldor*, 472 U.S. at 710 ("[U]nyielding weighting in favor of Sabbath observers over all other

interests contravenes a fundamental principle" by having "a primary effect that impermissibly advances a particular religious practice.").

Thus, this Court has held that religious accommodations under general laws are consistent with the Establishment Clause only if, among other requirements, no third parties are unduly burdened. In *Sherbert* v. *Verner*, 374 U.S. 398 (1963), for example the Court concluded that the Establishment Clause did not forbid—and therefore that the Free Exercise Clause could (and did) require—a judicially created religious accommodation under a state unemployment-benefits law for an employee who was fired for refusing to work on her Sabbath. The Court based that conclusion in part on the fact that the requested accommodation would not "abridge any other person's religious liberties." *Id.* at 409. Similarly, in *Cutter* v. *Wilkinson*, 544 U.S. 709 (2005), this Court held that for statutory accommodations under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.*, to comport with the Establishment Clause, reviewing courts "must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries." 544 U.S. at 720.[6]

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[6] Whether the Court applies this principle straightforwardly as an Establishment Clause limitation on the Free Exercise Clause, as *Weisman* specifies (see 505 U.S. at 587), or instead considers it in the application of strict scrutiny under petitioners' proffered alternative to the Court's free-exercise jurisprudence, the result here is the same: Because government has a compelling interest in avoiding Establishment Clause violations (*Widmar* v. *Vincent*, 454 U.S. 263, 271 (1981)), and the narrowest and only practicable way to avoid the Establishment Clause violation in this case would be to deny the requested exemption outright (because even

2. By contrast, this Court has flatly refused to grant or uphold religious exemptions from general laws when those exemptions would have unduly burdened third parties. In *Caldor*, *supra*, the Court invalidated a law requiring employers to accommodate Sabbatarians in all instances, because "the statute t[ook] no account of the convenience or interests of the employer or those of other employees who do not observe a Sabbath." 472 U.S. at 709. And in *Texas Monthly, Inc.* v. *Bullock*, 489 U.S. 1 (1989), the Court held that a statutory sales-tax exemption for religious periodicals violated the Establishment Clause by shifting a greater tax burden onto other taxpayers. The Court explained that the exemption would have "burden[ed] nonbeneficiaries markedly" by "provid[ing] unjustifiable awards of assistance to religious organizations and [therefore could not] but convey a message of endorsement to slighted members of the community." *Id.* at 15 (internal quotation marks and brackets by Court omitted) (quoting *Amos*, 483 U.S. at 348 (O'Connor, J., concurring in the judgment)).

More recently, in *Burwell* v. *Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), every member of the Court authored or joined an opinion recognizing that detrimental effects on nonbeneficiaries must be considered when evaluating requests for accommodations under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* See *Hobby Lobby*, 134 S. Ct. at 2760 ("Nor do we hold * * * that * * * corporations have free rein to take steps that impose 'disadvantages . . . on others' or that require 'the general

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limiting the scope of the exemption to 'expressive' goods and services would violate the Establishment Clause by unduly burdening third parties), petitioners' claim fails on their own theory.

public to pick up the tab.'" (brackets omitted)); *id.* at 2781 n.37 ("It is certainly true that in applying RFRA 'courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries.'"); *id.* at 2787 (Kennedy, J., concurring) (religious exercise must not "unduly restrict other persons * * * in protecting their own interests"); *id.* at 2790 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ., dissenting) ("Accommodations to religious beliefs or observances * * * must not significantly impinge on the interests of third parties."); see also *Holt* v. *Hobbs*, 135 S. Ct. 853, 867 (2015) (Ginsburg, J., joined by Sotomayor, J., concurring) (Court's recognition of right to accommodation under RLUIPA was constitutionally permissible because "accommodating petitioner's religious belief in this case would not detrimentally affect others who do not share petitioner's belief").

3. Eliding these Establishment Clause limitations, petitioners and many of their *amici* contend that bakers, florists, caterers, and presumably all other businesses that open their doors to the public should have a constitutional free-exercise right to refuse to serve same-sex couples on the same terms as other couples and individuals—regardless of whether the items being sold or the businesses in general have anything to do with weddings or the provision of wedding-related services. See, *e.g.*, Br. 38; Br. *Amici Curiae* C12 Group et al. 11–12.[7] That is discrimination, both in fact and as defined by Colorado law.

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[7] Petitioners do not present 'artistry' as a consideration in the free-exercise analysis, presumably because whether something is or isn't a religious exercise does not turn on whether it is artistic. Thus, on petitioners' view, *any* public accommodation

"Discrimination is not simply dollars and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public." *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241, 292 (1964) (Goldberg, J., concurring) (internal quotation marks omitted). Under the legal regime that petitioners posit, people like Charlie Craig and David Mullins would wake up each day knowing that, wherever they go, they may be turned away from public accommodations that deem them unfit to be served, and they would have no legal recourse as long as the denials were explained in religious terms. They "might be forced to pick their merchants carefully, like black families driving across the South half a century ago." Robin Fretwell Wilson &

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could deny *any* good or service to *anyone* on the basis of a religious belief or motivation.

Amici agree with respondents that the assertion of artistry also does not and cannot convert selling cakes into protected speech. If creativity or artistry in a commercial enterprise were sufficient to provide free-speech protections, nearly any business could claim the right to discriminate. A mechanic could describe himself as an automotive-repair artist; a landlord, a shelter-management artist; and a fast-food cook, a "sandwich artist." See, *e.g.*, Job Descriptions: Sandwich Artist, Subway, http://tinyurl.com/SubwayCareers ("The Sandwich Artist greets and serves guests, prepares food, maintains food safety and sanitation standards, and handles or processes light paperwork."). The legal regime proposed by petitioners would therefore license nearly boundless discrimination. At best, it would create a two-tiered system of rights and obligations, under which sellers of generic goods would have to comply with antidiscrimination laws while purveyors of specialty or custom products could discriminate at will—replacing modern antidiscrimination protections with a rule of 'separate and unequal.' Far from being required by the First Amendment, that scheme would stand constitutional protections on their head.

Jana Singer, *Same-Sex Marriage and Conscience Exemptions*, ENGAGE, FEDERALIST SOCIETY PRACTICE GROUPS, Sept 2011, at 12, 16–17, https://tinyurl.com/y76yg4zr.

In *Lawrence*, *supra*, this Court acknowledged that "for centuries there have been powerful voices to condemn homosexual conduct as immoral"; that "[t]he condemnation has been shaped by religious beliefs"; and that "[f]or many persons these are not trivial concerns but profound and deep convictions accepted as ethical and moral principles to which they aspire and which thus determine the course of their lives." 539 U.S. at 571. Yet the Court flatly rejected the view that "the majority may use the power of the State [or the courts] to enforce these views on the whole society," because "'[o]ur obligation is to define the liberty of all, not to mandate our own moral code.'" *Ibid.* (quoting *Planned Parenthood of Se. Pa.* v. *Casey*, 505 U.S. 833, 850 (1992)).

Here, petitioners request a constitutional permission slip to do under the Free Exercise Clause what this Court held in *Lawrence* is prohibited by the Due Process Clause. Their claim thus raises the same question as in *Lawrence*—and it warrants the same answer: Those who oppose marriage of same-sex couples are undeniably entitled to their beliefs, but they "may [not] use the power of the State to enforce these views on the whole society." 539 U.S. at 571. The right to believe, or not, and to practice one's faith, or not, is sacrosanct. But it does not extend to rewriting the laws to impose the burden of one's beliefs on innocent third parties. Government should not, and as a matter of law cannot, favor the particular religious beliefs of some at the expense of the rights, beliefs, and dignity of others. The Establishment Clause, like the Due

Process and Equal Protection Clauses, simply does not allow it.

II. PUBLIC-ACCOMMODATIONS LAWS SAFEGUARD RATHER THAN ERODE RELIGIOUS FREEDOM.

Far from offending religious freedom, public-accommodations laws like the Colorado Anti-Discrimination Act explicitly serve and advance that fundamental value. Title II of the Civil Rights Act, the public-accommodations laws of forty-five states and the District of Columbia, and countless local ordinances prohibit discrimination in the provision of goods or services on the basis of religion as well as forbidding various other categories of invidious discrimination. See, *e.g.*, *State Public Accommodation Laws*, NAT'L CONFERENCE OF STATE LEGISLATURES (July 13, 2016), http://tinyurl.com/ycy9eugt. These essential protections for religious freedom are threatened, not served, by petitioners' free-exercise claim.

A. Antidiscrimination laws protect religious freedom.

1. When Congress enacted Title II to bar discrimination in public accommodations, it included religion as a protected category. See 42 U.S.C. § 2000a(a). It did so to remedy the systematic refusals of service that it recognized to be occurring on the basis of religion as well as race. See, *e.g.*, 110 CONG. REC. H1615 (daily ed. Feb. 1, 1964) (statement of Rep. Teague) (noting that Title II barred discrimination against Jews, who were "not allowed in certain hotels"); *A Bill to Eliminate Discrimination in Public Accommodations Affecting Interstate Commerce: Hearing on S. 1732 Before the S. Comm. on Commerce*, 88th Cong. 735 (1963) statement of Franklin D. Roosevelt Jr., Under Secretary of Commerce) (explaining that in New

York "it has been traditional, among some of our resort places, to refuse to take members of the Jewish faith"). For example, Senate committee hearings included references to a hotel in New Hampshire that set aside specific weeks when it rented to Christians exclusively, and other weeks when it rented only to Jews. *Id.* at 780 (statement of Sen. Cotton). In other words, the hotel engaged in time-sharing to provide "equal but separate facilities" (*id.* at 1045), which Congress recognized to be a serious harm and a substantial barrier to full participation in civil society that warranted an equally serious and substantial federal remedy.

Title II, however, is limited both in the classifications for which it affords protections—race, color, religion, and national origin—and in the entities that it covers—hotels, rooming houses, restaurants, gas stations, and entertainment venues whose "operations affect [interstate] commerce." 42 U.S.C. § 2000a(b). To varying degrees, state and local public-accommodations laws fill the gaps in both respects. The Colorado Anti-Discrimination Act, for example, applies to *all* businesses in the state that sell goods or services to the public (COLO. REV. STAT. § 24-34-601(1)), and it bars discrimination on the basis of "disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry" (*id.* § 24-34-602(2)(a)).

2. The "fundamental object of" all these laws is "to vindicate 'the deprivation of personal dignity that surely accompanies denials of equal access to public establishments.'" *Heart of Atlanta*, 379 U.S. at 250; see also, *e.g.*, *Romer*, 517 U.S. at 631 (antidiscrimination laws "protect[ ] against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society"); *Gay*

Rights Coal. of Georgetown Univ. Law Ctr. v. *Georgetown Univ.*, 536 A.2d 1, 32 (D.C. 1987) (D.C. Human Rights Act advances fundamental value "embodied in our Bill of Rights—the respect for individual dignity in a diverse population").

Hence, if businesses are granted a constitutional license to violate antidiscrimination laws whenever they have a religious motivation, not only will LGBTQ people suffer harm, but, as other *amici* explain in more detail (see generally, *e.g.*, Br. *Amicus Curiae* NAACP Legal Defense and Education Fund, Inc.; Br. *Amici Curiae* National Women's Law Center et al.; Br. *Amici Curiae* Muslim Advocates et al.; Br. *Amici Curiae* Former Representative Tony Coelho et al.), the religiously based animus that some people harbor toward racial minorities, women, unwed mothers, people with disabilities, and a wide array of other groups[8] would likewise receive legal sanction.

3. What is more, the case law shows, and *amici*'s organizational experience and the experiences of our members confirm, that disfavor toward, unequal treatment of, and denials of service to members of minority faiths, persons adhering to a different faith, and atheists are all too common. And religious discrimination, like other forms of discrimination, may

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[8] Cf., *e.g.*, *Smith* v. *Fair Emp't & Hous. Comm'n*, 913 P.2d 909, 919 (Cal. 1996) (rejecting landlord's free-exercise defense and upholding enforcement of law barring discrimination against unmarried couples in rental housing); *Swanner* v. *Anchorage Equal Rights Comm'n*, 874 P.2d 274, 279 (Alaska 1994) (same); *Lukaszewski* v. *Nazareth Hosp.*, 764 F. Supp. 57, 61 (E.D. Pa. 1991) (rejecting religiously affiliated hospital's free-exercise defense and upholding enforcement of federal Age Discrimination in Employment Act).

be, and often is, premised on religious views or motivations. Hence, petitioners' arguments for a religious exemption permitting denials of service to same-sex couples could also be advanced to support denials of service to people of marginalized faiths.

In *Paletz* v. *Adaya*, No. B247184, 2014 WL 7402324 (Cal. Ct. App. 2014), for example, a Muslim hotel owner in Santa Monica, California, ordered the closing of a poolside event hosted by a Jewish group. After looking at a pamphlet describing the group and seeing attendees at the event wearing T-shirts bearing the group's name, the hotelier told an employee that "I don't want any [f—ing] Jews in the pool" (*id* at *2 (alteration in original)), said that "her family members would cut off her financing if they learned of the gathering" (Michael Cieply, *Jews Awarded Damages in California Hotel Case*, N.Y. TIMES (Aug. 15, 2012), http://tinyurl.com/9myoenc), and directed hotel staff forcibly to remove the Jewish guests from the property (2014 WL 7402324 at *4). A jury found that the hotelier violated the California public-accommodations law and awarded damages. See Cieply, *supra*.

In *Khedr* v. *IHOP Restaurants, LLC*, 197 F. Supp. 3d 384, 385 (D. Conn. 2016), a family was refused service at an International House of Pancakes in Connecticut for being Muslim: "The restaurant manager started to look at us up and down with anger, hate, and dirty looks because my wife was wearing a veil, as per our religion of Islam." *Ibid.* In front of the family's 12-year-old child, the IHOP manager told his staff "not to serve 'these people' any food." *Ibid.* The family sued under the Connecticut public-accommodations law, and the court denied IHOP's motion to dismiss, concluding that the incident was, at the very

least, "suggestive of discriminatory motive." *Id.* at 388.

In Arkansas, a shooting range declared itself a "Muslim-free zone." Abby Ohlheiser, *Justice Department Will 'Monitor' the 'Muslim-Free' Gun Range in Arkansas*, WASH. POST (Apr. 24, 2015), http://tinyurl.com/yc4fdjzu. And it refused to allow a Hindu father and son of South Asian descent to use the range, erroneously assuming that they were Muslims. *Id.*; see also Complaint ¶¶ 24, 32, 34, *Fatihah* v. *Neal*, No. 6:16-cv-00058-KEW (E.D. Okla. Feb. 17, 2016), http://tinyurl.com/ycgey871 (alleging that range owners posted sign declaring facility a "MUSLIM FREE ESTABLISHMENT," armed themselves with handguns when a Muslim man wanted to use the facility, and accused him of wanting to murder them because "[his] Sharia law required" it); see also Steven Cook, *Gun Shop Says it Won't Sell to Muslims*, DAILY GAZETTE (July 31, 2015), http://tinyurl.com/y7m6nywk (sporting-goods retailer in New York adopted policy of not selling guns to Muslims, "since I cannot tell a radical Muslim * * * from the 6 non radical Muslims left in the world").

And petitioners themselves choose whom to serve and whom to turn away based on their religious objections to the religious beliefs and practices of would-be customers: Petitioners state (at Br. 9) that they will not sell cakes that "promote atheism" or "celebrate events at odds with [their] religious beliefs." To the extent that petitioners thus refuse to sell to people of other faiths or of no faith the items that they would sell to coreligionists (*e.g.*, a cake for a Hindu or atheist couple's wedding), this conduct, too, violates the Colorado Anti-Discrimination Act.

4. In the related area of employment law, incidents of religious discrimination premised on employers' or fellow employees' religious beliefs are legion.

In *Nappi* v. *Holland Christian Home Ass'n.*, No. 11-cv-2832, 2015 WL 5023007 (D.N.J. Aug. 21, 2015), for example, a Catholic maintenance worker in New Jersey was repeatedly harassed by his supervisor and colleagues, who identified as Protestant and Reformed Christian. They called Catholicism a "'Mickey Mouse religion' and criticized Catholics for worshipping saints," encouraged the employee to leave his church, put religious literature in his locker, and "wanted to shoot [him]." *Id.* at *2. The supervisor terminated the plaintiff's employment, explaining that "he was being fired because, as a Roman Catholic, he was an 'outsider' who did not 'fit in.'" *Id.* at *3. The district court denied summary judgment to the business, concluding that the record evidence "clearly [gave] rise to an inference of discrimination" under Title VII. *Id.* at *8.

In *E.E.O.C.* v. *Townley Engineering & Manufacturing Co.*, 859 F.2d 610 (9th Cir. 1988), an atheist was constructively discharged from his job at a mining-equipment manufacturer in California that held mandatory weekly meetings involving "prayer, thanksgiving to God, singing, testimony, and scripture reading, as well as discussion of business related matters." *Id.* at 612. The court of appeals rejected the free-exercise defense of the company's owners "that the Bible and their covenant with God require[d] them to share the Gospel with all of their employees" (*id.* at 620), concluding that "[p]rotecting an employee's right to be free from forced observance of the religion of his employer is at the heart of Title VII's prohibition against religious discrimination" (*id.* at 620–621).

In *Huri* v. *Office of the Chief Judge of the Circuit Court*, 804 F.3d 826 (7th Cir. 2015), a Muslim child-care attendant who wore a hijab was harassed by her Christian supervisor in a county court in Illinois. The supervisor called the employee "evil," while describing herself, the chief judge, and another court employee as "good Christian[s]" (*id.* at 830); denied the employee time off for an Islamic religious holiday (*ibid.*); and engaged in "social shunning, implicit criticism of non-Christians, and uniquely bad treatment of" the employee and her daughter (*id.* at 834). The court of appeals reversed the district court's dismissal of the employee's hostile-work-environment claims under Title VII and the Equal Protection Clause.

And in *Minnesota ex rel. McClure* v. *Sports & Health Club, Inc.*, 370 N.W.2d 844 (Minn. 1985), a health club allowed "only born-again Christians * * * to be managers or assistant managers"; "question[ed] prospective employees about marital status and religion; terminat[ed] employees because of a difference in religious beliefs; refus[ed] to promote employees because of differing religious beliefs; and fail[ed] to provide 'open' public accommodations." *Id.* at 846–847. Job "applicants were asked whether they attend church, read the Bible, are married or divorced, pray, engage in pre-marital or extra-marital sexual relations, believe in God, heaven or hell, and other questions of a religious nature," in keeping with the gym owners' "fundamentalist religious convictions [that] require[d] them to act in accordance with the teachings of Jesus Christ and the will of God in their business as well as in their personal lives." *Ibid.* "[B]ased on an interpretation of the Bible, [the gym] w[ould] not hire, and w[ould] fire, individuals living with but not married to a person of the opposite sex; a young, single woman working without her father's consent or

a married woman working without her husband's consent; a person whose commitment to a non-Christian religion is strong; and someone who is 'antagonistic to the Bible,' which according to *Galations* 5:19-21 includes fornicators and homosexuals." *Id.* at 847. The gym "justifie[d its] rigid policy by relying on [the owners'] religious belief that they are forbidden by God, as set forth in the Bible, to work with 'unbelievers.'" *Ibid.* The Minnesota Supreme Court denied the gym a free-exercise exemption from state antidiscrimination laws and affirmed findings of substantial evidence of the statutory violations. *Id.* at 854.

5. Incidents like these of discrimination on the basis of religion are often open and notorious. In Colorado, where petitioners are located, for example, employers—including law firms, accounting firms, and cleaning companies—post job descriptions specifically advertising for Christian employees, in violation of Title VII and EEOC guidelines. See Matthew J. Cron et al., *Religious Minorities Need Not Apply: Legal Implications of Faith-Based Employment Advertising*, COLO. LAWYER, Apr. 2014, at 27, 27–28, http://tinyurl.com/yd2wv5m6. And the incidence of discrimination appears to be on the rise: "Religion-based discrimination charges filed with the EEOC have more than doubled in the past fifteen years." *Id.* at 29.

That religious discrimination against customers and employees may be premised on the religious beliefs of business owners has not deterred the lower courts from concluding that antidiscrimination laws ought to be enforced. Neither should it deter this Court.

B. Recognizing petitioners' requested exemption would undermine religious freedom.

"Just as the government may not segregate people on account of their race, so too it may not segregate on the basis of religion." *Bd. of Educ.* v. *Grumet*, 512 U.S. 687, 728 (1994) (Kennedy, J., concurring in the judgment). Yet that would be the precise effect of recognizing constitutionally mandated exemptions from laws requiring equal treatment in the provision of goods and services, based on religiously motivated objections to other people or their faith. The exemptions would thus compromise the integrity of the public-accommodations laws, which embody and advance the government's keen interests not only in stamping out discrimination but also in avoiding "put[ting] the imprimatur of the State itself on an exclusion that soon demeans or stigmatizes those whose own liberty is then denied" (*Obergefell*, 135 S. Ct. at 2602).[9]

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[9] When government has forsaken this latter interest and instead adopted policies approving of or supporting the underlying discrimination, it has compounded the stigmatic harm. And when courts have done so in the name of religion, the effect has, if anything, been even more pronounced. For example, the Missouri Supreme Court once proclaimed that "the introduction of slavery amongst us was, in the providence of God, * * * a means of placing that unhappy race within the pale of civilized nations." *Scott* v. *Emerson*, 15 Mo. 576, 587 (1852). The Pennsylvania Supreme Court similarly upheld segregation, believing that it was bound to "follow the law of races established by the Creator himself." *W. Chester & Phila. R.R. Co.* v. *Miles*, 55 Pa. 209, 213 (1867). So did the Supreme Courts of Kentucky, Alabama, and Indiana. See *Berea Coll.* v. *Kentucky*, 94 S.W. 623, 627–628 (Ky. 1906); *Bowie* v. *Birmingham Ry. & Elec. Co.*, 27 So. 1016, 1019–1020 (Ala. 1900); *Indiana* v. *Gibson*, 36 Ind. 389, 405 (1871). And

Though petitioners seek to downplay or deny the harms to LGBTQ individuals and same-sex couples and do not acknowledge the parallel risks to members of minority faiths and other historically disadvantaged groups, there is no logical limit to the exemption that petitioners seek. The basic structure of their argument is that, because they disapprove of Craig, Mullins, and the couple's marriage based on petitioners' own religious views, they have the absolute right under the Free Exercise Clause to refuse service, all antidiscrimination laws to the contrary notwithstanding.

That argument is as expansive as it is troubling. For even if petitioners might limit their religiously based denials of service solely to the weddings of same-sex couples—though their opening brief (at 9) says otherwise—their argument, if accepted, would also apply to other religiously motivated denials of service, including discrimination against people of a particular race, religion, national origin, sex, or any other protected characteristic. For on petitioners' view, any business may refuse to serve anyone who "celebrate[s] events at odds with [the merchant's] religious beliefs." Br. 9. The "danger of stigma and

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not so long ago, a Virginia court upheld the State's criminalization of interracial marriages because "'[a]lmighty God created the races white, black, yellow, malay and red, and he placed them on separate continents[, a]nd but for the interference with his arrangement there would be no cause for such marriages.'" *Loving* v. *Virginia*, 388 U.S. 1, 3 (1967) (quoting trial judge) (reversing state-court rulings and invalidating antimiscegenation law as violation of equal protection). Those decisions did not just passively allow for discrimination to continue; they justified and thereby encouraged it.

stirred animosities" (*Grumet*, 512 U.S. at 728 (Kennedy, J., concurring in the judgment)) is profound.

And petitioners' justification (at Br. 52–53) of their disparate treatment toward Craig and Mullins as based on the couple's conduct in marrying rather than their status as gay men should also fail. For when "the conduct targeted * * * is conduct that is closely correlated with being" a member of a marginalized group, the object of the discrimination is not just the conduct but the "persons as a class." *Lawrence*, 539 U.S. at 583 (O'Connor, J., concurring in the judgment).

In the wedding context, suppose that an interfaith couple wishes to marry, and in keeping with the religion of one, the couple plans to serve kosher (or halal) food. But the only kosher (or halal) caterers in town refuse to prepare food for interfaith weddings based on their religious beliefs. Should the caterers have the right, even in the face of public-accommodations protections against religious discrimination, to force the couple to choose between forgoing their wedding reception altogether, on the one hand, or violating the sincere beliefs of one of them in the celebration of their wedding, on the other?

And what of the children who are part of a family that, in the opinion of any number of business owners, should not exist because the parents are of different faiths or were married within a faith that the merchants find offensive or contrary to their own religious beliefs? Might the children be denied a birthday cake or a party celebrating a bar or bat mitzvah?

More broadly, may the local movie theater refuse to sell a ticket to a boy in a yarmulke because his faith

is "at odds with" that of the manager? May a restaurant deny service to a Muslim woman who wears a Hijab or a Sikh man who wears a Turban? May the only grocer in town refuse to sell fruit to an unmarried mother and her child? And what about the recently widowed Catholic whose Protestant spouse wanted a Protestant funeral. May she be barred from all the nearby funeral homes on account of *her* faith, so that she is unable to find a place to honor and say goodbye to her spouse in accordance with the dictates of her beloved's faith?

* * *

If the Free Exercise Clause licensed religiously motivated denials of service to same-sex couples, as petitioners contend, then it would appear to sanction and authorize all other religiously motivated denials, including exclusions based on the customers' faith, in just the same way. One could be refused employment, thrown out of a hotel, or barred from purchasing a cup of coffee just for being of the 'wrong' religion (or race, or sex, or sexual orientation), and no federal, state, or local authority or law could do anything to remedy the situation. Not only would that outcome be the antithesis of religious freedom, but it would also foment civic "divisiveness based upon religion that promotes social conflict"—the very evil that the Religion Clauses of the First Amendment were designed to forestall. *Van Orden* v. *Perry*, 545 U.S. 677, 698 (2005) (Breyer, J., concurring in the judgment). The fundamental principle of equal treatment under law—which is as central to the prohibitions against discrimination of the Religion Clauses as it is to those of the Due Process and Equal Protection Clauses—should not be so easily overthrown.

CONCLUSION

The judgment of the Colorado Court of Appeals should be affirmed.

Respectfully submitted.

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OCTOBER 2017

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APPENDIX

APPENDIX OF *AMICI CURIAE*

Americans United for Separation of Church and State

Americans United for Separation of Church and State is a national, nonsectarian public-interest organization that is committed to preserving the constitutional principles of religious freedom and the separation of church and state. Americans United represents more than 125,000 members and supporters nationwide. Since its founding in 1947, Americans United has participated as a party, as counsel, or as an *amicus curiae* in the leading church–state cases decided by this Court and by the lower federal and state courts throughout the country. Americans United has long fought to uphold the guarantees of the First Amendment and equal protection that government must not favor, disfavor, or punish based on religion or belief, and therefore that religious accommodations must not license maltreatment of, or otherwise detrimentally affect, innocent third parties.

Anti-Defamation League

The Anti-Defamation League was organized in 1913 with a dual mission to stop the defamation of the Jewish people and to secure justice and fair treatment for all. Today, it is one of the world's leading organizations fighting hatred, bigotry, discrimination, and anti-Semitism, and advocating for civil rights for all. To this end, ADL is a steadfast supporter of antidiscrimination laws as well as the religious liberties guaranteed by both the Establishment and Free Exercise Clauses. ADL staunchly believes that the Free

Exercise Clause is a critical means to protect individual religious exercise, but it must not be used as vehicle to discriminate by enabling some Americans to impose their religious beliefs on others.

Bend the Arc: A Jewish Partnership for Justice

Bend the Arc is the nation's leading progressive Jewish voice empowering Jewish Americans to be advocates for the nation's most vulnerable. Bend the Arc mobilizes Jewish Americans beyond religious and institutional boundaries to create justice and opportunity for all, through bold leadership development, innovative civic engagement, and robust progressive advocacy.

Fairness West Virginia

Fairness West Virginia, founded in 2009, is a statewide civil-rights advocacy organization dedicated to fair treatment and civil rights for lesbian, gay, bisexual and transgender West Virginians. Our mission is to ensure that LGBTQ people can be open, honest, and safe at home, at work, and in the community. Our organization of more than 14,000 supporters and volunteers is open to everyone who believes in fundamental fairness. Discrimination of any kind runs counter to our principles. We believe that the constitutional protections for religious freedom serve to safeguard against discrimination, not to facilitate it. We join this brief because the petitioners seek a broad-based license to discriminate against the LGBTQ community, thus threatening to undermine the record number of municipal nondiscrimination ordinances recently adopted in West Virginia.

Interfaith Alliance Foundation

Interfaith Alliance Foundation is a 501(c)(3) non-profit organization that celebrates religious freedom by championing individual rights, promoting policies to protect both religion and democracy, and uniting diverse voices to challenge extremism. Founded in 1994, Interfaith Alliance Foundation's members belong to 75 different faith traditions as well as no faith tradition. Interfaith Alliance Foundation has a long history of working to ensure that religious freedom is a means of safeguarding the rights of all Americans and is not misused to favor the rights of some over others.

National Council of Jewish Women, Inc.

The National Council of Jewish Women, Inc., is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for "Laws and policies that provide equal rights for all regardless of race, gender, national origin, ethnicity, religion, age, disability, marital status, sexual orientation, gender identity and expression, economic status, immigration status, parenthood status, or medical condition." Consistent with our Principles and Resolutions, NCJW joins this brief.

People For the American Way Foundation

People For the American Way Foundation is a nonpartisan civic organization established to promote and protect civil and constitutional rights, including religious liberty. Founded in 1981 by a group of civic, educational, and religious leaders, PFAWF now has hundreds of thousands of members nationwide. Over its history, PFAWF has conducted extensive education, outreach, litigation, and other activities to promote these values. PFAWF strongly supports the principle that the Free Exercise Clause of the First Amendment is a shield for the free exercise of religion, protecting individuals of all faiths. PFAWF is concerned, however, about efforts, such as in this case, to transform this important shield into a sword to obtain accommodations that unduly harm others, which also violates the Establishment Clause. This is particularly problematic when the effort is to obtain exemptions based on religion from antidiscrimination laws, which protect against discrimination based on race, gender, sexual orientation, and other grounds, and which are also an important protection for religious free exercise.